

Remarks

Claims 1-4 are presently pending. Claims 1-4 have been rejected.

Claims 1-4 have been formally amended for purposes of consistency and clarification. These amendments introduce no substantive changes into the claims and are supported throughout the original specification of this application. Hence, no new matter has been introduced by these amendments.

The Examiner has rejected claims 1-4 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,315,796 to Gruhlke ("Gruhlke") in view of U.S. Patent No. 772,928 to Dunlap ("Dunlap"). With regard to claims 1 and 2, the Examiner asserts that Gruhlke discloses the use of a wooden post protector including a rectangular plastic collar 17 having an open upper end dimensioned for receipt of a wooden post 10 therein, a closed lower end 17b and four side walls 17a. The Examiner contends that Gruhlke teaches the basic claimed post protector except for the presence of an aperture in each side wall and a plurality of drainage apertures. However, the Examiner maintains that Dunlap teaches that it is known in the art to provide a rectangular post protector 1 with apertures 3 through each of the four side walls for receiving screws 8. The Examiner asserts that Dunlap also discloses the use of drainage apertures 4. The Examiner

concludes that although the apertures 4 of Dunlap are located in side walls, it would have been obvious to position them so as to affect optimum water drainage "since the mere rearranging of essential parts of an invention involves only routine skill in the art." With regard to claim 3, the Examiner contends that the collar of Gruhlke is rectangular. With regard to claim 4, the Examiner concludes that it would have been an obvious design choice to coordinate the shape of the collar with the shape of the post.

This rejection is respectfully but strenuously traversed for the reasons set forth in detail below.

In general, three basic criteria must be satisfied in order to establish a *prima facie* case of obviousness (M.P.E.P. § 706.02(j)). First, the reference or combination of references must teach or suggest all of the claim limitations. Second, there must be a reasonable expectation of success. Third, there must be some suggestion or motivation, either in the references or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings.

The rejection fails to satisfy the first criterion of a *prima facie* showing of obviousness. Even the hypothetical combination of Gruhlke and Dunlap does not suggest all of the elements of the wooden post protective sleeves defined by

claims 1 and 2. Specifically, there is no teaching in either of the cited references of a collar with a closed lower end having a plurality of drainage apertures therethrough for allowing any water on the sleeve or the wooden post to drain into the ground area. With regard to Gruhlke, it is clear that neither of the described bottom walls 17b and 18c of the sleeves 17 or 18 contains an aperture at all. Indeed, no aperture is present in any of the walls 17a, 17b, 18a and 18c of the sleeves 17 and 18.

Dunlap does not cure this deficiency since it also fails to teach the collars of claims 1 and 2. Initially, it is noted that the sleeve 1 of Dunlap has an open lower end, as opposed to a closed lower end such as that possessed by each of the sleeves of the present invention (lines 46-49; Figs. 1 and 2). Thus, Dunlap provides no indication of a collar having a closed lower end, as recited in claims 1 and 2. Moreover, the Examiner's contention that Dunlap teaches the presence of drainage apertures 4 is incorrect. The specification of Dunlap does not state or even suggest that the perforations 4 drain water from the system. Instead, Dunlap discloses an alternative mechanism for removing water, one that is inherent in the design of the sleeve 1 (lines 52-71):

At the upper end of the sleeve and at a corner thereof which comes underneath at the overlapping edges the sheet is cut away, as at 5, and an incision 6 extends down into the sheet parallel with the edge thereof. Thus the material between

the incision 6 and the edge of the sheet forms a tongue. By providing the cut-away space 5 the upper edges of the sleeve may be formed in continuous lines, as shown in Fig. 3—that is, the edge of the outer portion of the sheet constituting the sleeve at the overlap may be forced back in alinement (sic) with the edge of the nether portion of the sheet. Thus the upper edges of the sleeve can be made to fit snugly against the sides of the post 7, which is inserted therein, as shown in Fig. 2, and thus the upper edge of the said sleeve will have a tendency to shed the moisture away from the lower end of the post.

Claims 3 and 4 depend directly from claim 2 and therefore contain all of its limitations. Consequently, claims 1-4 are patentably distinct from the cited combination of references.

Reconsideration and withdrawal of the rejection are respectfully requested. Please remove the rejection under 35 U.S.C. § 103(a) of claims 1-4, and enter the allowance thereof.

In view of the foregoing amendments and remarks, reconsideration and allowance of the pending claims are respectfully solicited. Please remove the rejection under 35 U.S.C. § 103(a), and enter the allowance of claims 1-4. The Applicants respectfully request that a timely Notice of Allowance be issued in this case.

Respectfully submitted, Reg. No. 53,120

James R. Kiamie for
Richard W. Goldstein
Registration No. 36,527
Goldstein & Lavas, P.C.
Attorneys for Applicant
2071 Clove Road
Staten Island, NY 10304
(718) 727-9780

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